

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

PLAINTIFF,

v.

CR. No. 08-20020

CLIFTON AMERSON SHULTZ,

HONORABLE SEAN F. COX

DEFENDANT.

---

**ORDER REGARDING**  
**REPORT & RECOMMENDATION**  
**ON DEFENDANT'S MOTION TO SUPPRESS**

Defendant Clifton Amerson Shultz ("Defendant") is charged with being a felon in possession of a firearm. The matter is currently before the Court for consideration of the Government's objections to the Report and Recommendation ("R&R") filed by Magistrate Judge Michael Hluchaniuk on September 12, 2008. For the reasons below, the Court finds that the Government's objections have merit. The Court shall therefore refer this matter back to Magistrate Judge Hluchaniuk with instructions to reconsider the evidence presented and issue an R&R resolving the credibility issue and determining whether there was probable cause for the stop.

On April 17, 2008, Defendant filed a motion to suppress evidence. The opening briefs filed by the parties indicated that both parties were in agreement that the motion boils down to whether the officers had probable cause to believe that the civil infraction of obstruction of traffic had occurred. The Government contends that Defendant was parked in the street and therefore probable cause existed to believe that Defendant had committed the offense of

obstruction of traffic. Defendant, on the other hand, contends that he had stopped in a driveway, and had not stopped his vehicle in the street, and therefore there was no probable cause to stop his car for the offense of obstruction of traffic.

Magistrate Judge Hluchaniuk held an evidentiary hearing on June 12, 2008, at which time several witnesses testified. At that hearing, both parties agreed that motion presented a **factual credibility determination for the Court**. (*See* Tr. of 6/12/08 Hearing at 78)(Wherein the Government states that “this is a factual credibility determination for the Court” and Defense Counsel agreed, stating, “I believe that it is going to be simply a credibility question.”). The parties then filed supplemental briefs, continuing to assert the parties’ respective positions as to the credibility of the witnesses.

On September 12, 2008, Magistrate Judge Hluchaniuk issued his R&R, wherein in he recommends that the Court grant the motion. The R&R did not make any credibility determinations as to the witnesses that testified at the evidentiary hearing. Although the issue was not before the Court, the Magistrate Judge’s determination focused on the issue of whether the offense of obstruction of traffic had been adequately identified. (*See* R&R at 13-14). The Magistrate Judge then concluded that the offense had not been sufficiently identified and recommended that the motion be granted on this basis. (R&R at 14).

The Government filed timely objections to the R&R, wherein it asserts that the R&R focused on a non- issue and then penalized the Government for failing to present evidence pertaining to that non-issue. It notes that the Defendant and his attorney never asserted that obstructing traffic is not a civil infraction, and never denied that parking a car in the street so that other cars had to veer around it obstructs traffic. Rather, it asserts that “[t]he issue framed by the

briefs and testimony was whether defendant had so parked his car, obstructing traffic – not whether doing so would have violated the city ordinance.” (Objections at 5).

The Court finds merit in the Government’s objections to the R&R. The lengthy legal analysis in the R&R was unnecessary because the parties both agreed that the officers had to have probable cause to stop Defendant for the offense of obstructing traffic. The issue to be determined by the Court was a factual credibility determination – whether Defendant, who was driving a white Bonneville, stopped the car on Industrial Avenue between Bundy and Carpenter, causing two vehicles to stop behind the Bonneville and then drive around the Bonneville thereby obstructing traffic, or did the stop by Defendant’s car take place in Mr. Trouser’s driveway.

Accordingly, **IT IS ORDERED** that this motion is **REFERRED** back to Magistrate Judge Hluchaniuk with instructions to reconsider the evidence presented and issue an R&R resolving the credibility issue and determining whether there was probable cause for the stop.

**IT IS SO ORDERED.**

s/Sean F. Cox  
Sean F. Cox  
United States District Judge

Dated: October 23, 2008

I hereby certify that a copy of the foregoing document was served upon counsel of record on October 23, 2008, by electronic and/or ordinary mail.

s/Jennifer Hernandez  
Case Manager